

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TRACY EUGENE McKEE,)	
)	
Petitioner,)	
)	
v.)	Case No. 4:11 CV 871 RWS
)	
ELLIS McSWAIN,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before me on the petition for writ of habeas corpus filed by Petitioner Tracy Eugene McKee. I referred this matter to United States Magistrate Judge Abbie Crites-Leoni for a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b). On July 11, 2014, Judge Crites-Leoni filed her recommendation that McKee's habeas petition should be denied.

Objections to Judge Crites-Leoni's Report and Recommendation were due to be filed by July 25, 2014. As of the date of this order, McKee has not filed any objection to the Report and Recommendation. After careful consideration, I will adopt and sustain the thorough reasoning of Judge Crites-Leoni's report and I will deny McKee's habeas petition for the reasons stated in the Report and Recommendation.

I have also considered whether to issue a certificate of appealability. To grant a certificate of appealability, the Court must find a substantial showing of the denial of a federal constitutional right. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. Cox v. Norris, 133 F.3d 565,

569 (8th Cir. 1997) (citing Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994). Because petitioner has not made such a showing in this case, I will not issue a certificate of appealability.

Accordingly,

IT IS HEREBY ORDERED that Judge Crites-Leoni's Report and Recommendation filed on July 11, 2014 is adopted and sustained in its entirety.

IT IS FURTHER ORDERED that Petitioner Tracy Eugene McKee's Petition for Writ of Habeas Corpus is **DENIED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

A separate Judgment in accordance with this Memorandum and Order is entered this same date.

A handwritten signature in black ink, appearing to read "Rodney W. Sippe", written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 6th day of August, 2014.